

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION

UNITED STATES OF AMERICA, CR 04-30110

Plaintiff,

v.

DARREN YOUNGMAN
a/k/a TOTE YOUNGMAN,

GOVERNMENT RESISTENCE
TO DEFENSE MOTION FOR
PRODUCTION OF RECORDS

Defendant.

Comes now the Government by and through Assistant United States Attorney Randolph J. Seiler, and files this resistance to the defense motion for production of records.

As a preliminary matter, the Government informs the Court that it has engaged in open discovery with respect to this matter and is in compliance with the Court's Order fixing dates, the Federal Rules of Criminal Procedure, and 18 U.S.C. § 3500 in providing discovery to the Defendant in this case. The Government also agrees to provide the Defendant with any materials required under the holdings in Brady v. Maryland, 373 U.S. 83 (1963) and Giglio v. United States, 405 U.S. 150 (1972). The Government, however, objects to the Court entering any order directing the Government to provide discovery beyond these requirements and objects to the defense motion for production of records.

The defense motion requests mental health, medical and criminal history records.

The issue of mental health records was recently addressed by United States Magistrate Judge Mark A. Moreno in United States v. Jeffery G. Stone, CR 05-30049. This matter is currently on appeal to the United States District Court. See "Motion to Reconsider and Appeal of Magistrate's Order denying Defendant's motion to provide mental health records" filed with the Clerk of the United States District Court on or about August 5, 2005.

The Government relies on the well reasoned and learned opinion of the United States Magistrate Judge with respect to the providing of mental health records. It is the Government's position that mental health records fall squarely within the scope of the Federal Psychotherapist-Patient Privilege, and therefore, are not discoverable. Jaffee v. Redmond, 518 U.S. 1, 9-10, 116 S. Ct. 1923, 135 L. Ed. 2d 337 (1996). The Eighth Circuit Court of Appeals has also addressed this matter in Newton v. Kemma, 354 F.3d 776 (8th Cir. 2004). It clearly and unequivocally set forth the law in the Eighth Circuit with respect to the disclosure of mental health records. They are not discoverable, nor are they to be considered or obtained for in-camera inspection. Therefore, relying on the above authority, and including the United States Magistrate Judge's Order in United States v. Stone, the Government resists the defense motion to provide mental health records.

With respect to medical records, the Government has provided medical records in its possession. In fact, within the last several days, the Government, at the request of the defense, followed up with Indian Health Service Hospital to check on the availability of

medical records. Additional records were identified and will be provided to the defense. The Government, however, objects to the requirement that we go out and get something that we don't have or control. The Government has disclosed all medical records in its possession.

With respect to criminal history records, the Government is not required to provide the Defendant with copies of the criminal records of its witnesses. United States v. Roach, 28 F.3d 729, 734 (8th Cir. 1994); United States v. Taylor, 542 F.2d 1023, 1026 (8th Cir. 1976); Hemphill v. United States, 392 F.2d 45, 48 (8th Cir. 1968).

Therefore, based upon the authorities set forth above, the Government requests that the Defendant's motion be denied in all respects.

Dated this 12th day of August, 2005.

MICHELLE G. TAPKEN
Acting United States Attorney

/s/ Randolph J. Seiler

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CERTIFICATE OF SERVICE

The undersigned attorney for the United States of America hereby certifies that on the 12th day of August, 2005, a copy of the Government's Response to Defense Motion for Production of Records was provided by electronic filing or by first-class mail to Jana Miner, Public Defender's Office, 124 S. Euclid, Suite 202, Pierre, SD 57501.

/s/ Randolph J. Seiler

Randolph J. Seiler
Assistant United States Attorney